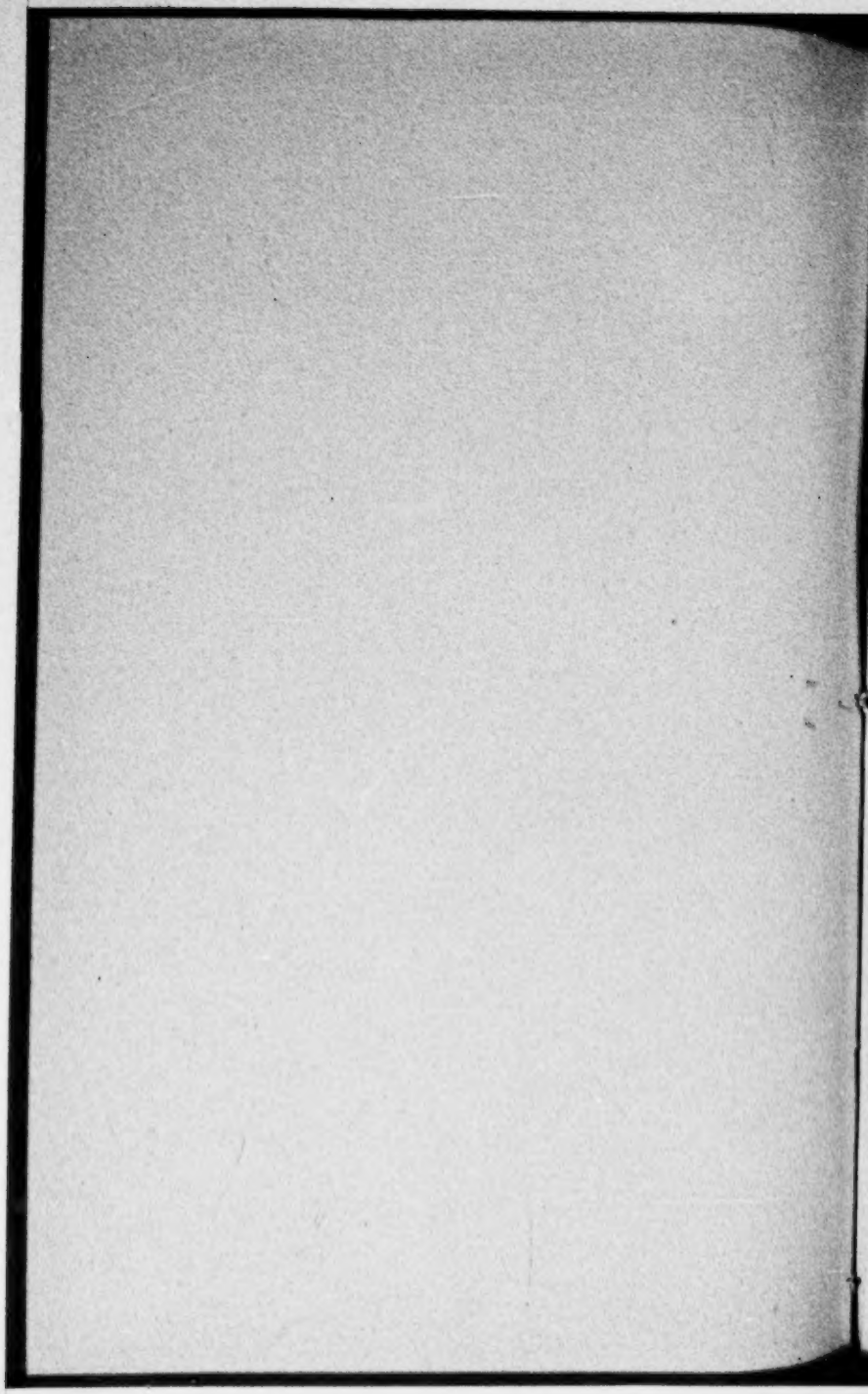

(19,455.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1904.

No. 355.

GEORGE W. BEAVERS, APPELLANT,

vs.

CHARLES J. HAUBERT, UNITED STATES MARSHAL IN AND FOR THE EASTERN DISTRICT OF NEW YORK.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF NEW YORK.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., DECEMBER 27, 1904.

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1 United States Circuit Court for the Eastern District of New York.

To the circuit court of the United States for the eastern district of New York:

The petition of George W. Beavers respectfully shows:

I. That your petitioner is a citizen of the United States and is imprisoned and restrained of his liberty in the custody of one, Charles J. Haubert, marshal of the United States, within and for the eastern district of New York, in the borough of Brooklyn, city of New York, eastern district of New York, and within the space of twenty miles therefrom, and held under color of authority of the United States, as evidenced by a warrant to apprehend, dated the 3rd day of June, 1904, and signed by B. Lincoln Benedict, Esq., a United States commissioner in and for the eastern district of New York, and has been committed and is detained under and by virtue of the said warrant and not by virtue of any judgment, decree or final order of any court of the United States; a copy of such warrant being hereto annexed and marked Exhibit "I" and made part hereof.

II. That the cause or pretense of the imprisonment of your petitioner, according to the best of his knowledge and belief, is that a complaint on removal was made under oath the first day of June, 1904, charging or purporting to charge your petitioner with the commission of a crime against the United States in the District of Columbia; a copy of which complaint is annexed hereto and marked

2 Exhibit "II" and made part hereof. That said complaint is verified by one, Frank E. Little.

That in said complaint the said Frank E. Little referred to a copy of a bench warrant issued by Hon. Harry M. Clabaugh, chief justice of the supreme court of the District of Columbia, on the 3rd day of November, 1903, a copy of which is herewith annexed and marked Exhibit "III" and made part hereof, and a paper purporting to be an exemplified copy of an indictment alleged to have been found in the city of Washington, District of Columbia, by the grand jury thereof at the April term thereof, purporting to charge the petitioner, George W. Beavers, with the commission of a crime against the United States, a copy of which indictment is hereto annexed and marked Exhibit "IV" and made part hereof. And that the cause or pretense of the imprisonment and restraint of your petitioner, is that a charge has been made against him, as set forth in the said documents hereinbefore enumerated.

III. That your petitioner is restrained of his liberty without due process of law; that the arrest under the process hereinbefore referred to is wholly void and without force or effect. That said restraint is illegal and in violation of the rights insured and guaranteed

to him under the Constitution of the United States of America, article V of the amendments thereof.

That the said marshal in and for the eastern district of New York had no authority to arrest your petitioner under the said warrant, and the said United States commissioner had no jurisdiction
3 to issue the same and that the said commissioner had no jurisdiction to require bail of your said petitioner, or to hold him in default thereof.

IV. That your petitioner has duly objected to the proceedings before the said commissioner on the ground that the said commissioner is without jurisdiction in the premises and that he has not given bail in accordance with the requirements of the said commissioner, and that he is in the actual custody of the United States marshal in and for the eastern district of New York.

V. That the illegality of the arrest and restraint of the liberty of your petitioner arises from the following facts:

That on the 16th day of July, 1903, two indictments were found against your petitioner by the grand jury of the United States in and for the eastern district of New York, charging him with a violation of sections 1781 and 1782 of the Revised Statutes respectively, and that on the 25th day of July, 1903, an indictment was found by the said grand jury against your petitioner, charging him with a violation of section 1781 of the Revised Statutes. That on the 3rd day of September 1903, a bench warrant was issued thereon, a copy of which is hereto annexed, and marked Exhibit "VIII" and made part hereof. That removal proceedings were instituted against your petitioner in the southern district of New York, under the indictment found on July 25th, 1903, as aforesaid, and that on November 10th, 1903, a warrant of removal was issued by the Hon.
4 George C. Holt, a district judge of the United States in and for the southern district of New York, directing the removal of your petitioner to the eastern district of New York, for the purpose of answering to the said indictments. A copy of which is hereto annexed, marked Exhibit "VII" and made part hereof.

That on or about the 23rd day of May, 1904, an order was entered in the circuit court of the United States for the southern district of New York, directing the said George W. Beavers to surrender himself on or before the 25th day of May, 1904, into the custody of William Henkel, United States marshal for the southern district of New York, for the purpose of removal to the eastern district of New York, under the warrant of removal issued on November 10th, 1903, as aforesaid, by the Hon. George C. Holt. That pursuant to said order, the said George W. Beavers did on the 24th day of May, 1904, surrender himself into the custody of the said William Henkel, for the purposes aforesaid and did on the 24th day of May, 1904, enter into a recognizance before the Hon. Geo. B. Adams, one of the judges of the district court of the United States, for the southern district of New York, in the penal sum of $10,000. with one James R. Brown, as surety, for his appearance at the next regular term of the

United States circuit court for the eastern district of New York, a copy of which recognizance is hereto annexed and marked Exhibit "V" and made part hereof. That on the 28th day of May, 1904, William J. Youngs, Esq., United States district attorney in and for the eastern district of New York, notified the petitioner and his surety to appear before the United States
5 circuit court for the eastern district of New York, on the first day of June, 1904, for the purpose of pleading to said indictments, a copy of which notice is hereto annexed and marked Exhibit "VI" and made part hereof. That on the first day of June, 1904, your petitioner duly appeared before the United States circuit court for the eastern district of New York, and his arraignment for the purpose of pleading to three indictments found against him by the grand jury for the eastern district of New York, as aforesaid, was moved by the said United States district attorney. That the court accorded the petitioner one week's time to move upon and plead to the said indictments. That on the 7th day of June, 1904, notice of motion to quash the said indictments and affidavits and exhibits relating thereto, and notice of motion for a bill of particulars in respect of each of the said indictments were served upon William J. Youngs, Esq., United States district attorney, as aforesaid, returnable on the 8th day of June, 1904, at ten o'clock a. m. That on the 8th day of June, 1904, your petitioner duly appeared before the said circuit court in accordance with the directions of Hon. Edward B. Thomas, a district judge of the United States in and for the eastern district of New York, prepared to move upon and plead to the said indictments. That at that time the said district attorney refused to proceed further with the proceedings in reference to the said indictments; but stated that it was his intention to institute proceedings for the removal of the accused to the
6 District of Columbia, under the complaint, warrant and other papers hereinbefore referred to. That thereupon the court declined to proceed further with reference to the said indictments and adjourned all further proceedings thereon until the 13th day of June, 1904, and on that day further adjourned all further proceedings till the 18th day of June, 1904, and directed your petitioner to appear on that day and enlarged him until that date, upon the recognizance before entered into and hereto annexed and marked Exhibit "V." That the said recognizance is still subsisting and is of full force and effect and has not been cancelled or annulled. That the said motions in respect of the said indictments are still pending undetermined in the circuit court of the United States for the eastern district of New York, as aforesaid, and that the said indictments have not been quashed or nolle prossed; but still remain in full force and effect. That your petitioner is ready to proceed with the motions in respect of the said indictments and if such motions are overruled, to plead thereto.

VI. That as your petitioner is informed by counsel and verily believes he has a right to remain in the eastern district of New York

until criminal justice therein is satisfied and until he is tried upon the said indictments, or they are quashed or otherwise disposed of. That his arrest for purposes of removal to the District of Columbia is in violation of his constitutional right not to be restrained
7 without due process of law and his other constitutional rights and that the said commissioner has no jurisdiction or authority to arrest, bail or commit your petitioner while he is still in the custody of the United States, for the purpose of pleading to the indictments found in the eastern district of New York, as evidenced by the recognizance hereinbefore referred to and hereto annexed.

Wherefore your petitioner prays that a writ of *habeas corpus* issue forthwith, directed to the person having your petitioner in custody, commanding him to bring the body of your petitioner before this court forthwith for such action thereon as may be proper in the premises.

Dated, Brooklyn, June 17th, 1904.

GEORGE W. BEAVERS, *Petitioner.*

MORGAN & SEABURY,
Attorneys for Petitioner.

Office & P. O. address, 290 Broadway, borough of Manhattan, New York city.

UNITED STATES OF AMERICA,
Eastern District of New York, County of Kings. }

George W. Beavers being duly sworn, deposes and says, that he has read the foregoing petition and knows the contents thereof, and that the same is in all respects true.

GEORGE W. BEAVERS.

Subscribed and sworn to before me this 13th day of June, 1904.

[L. S.] R. A. RANDALL,
Notary Public, Kings Co., N. Y., # 8.

Resworn to before me this 17 day of June A. D. 1904

R. A. RANDALL,
Notary Public, Kings Co., N. Y., # 8.

8 EXHIBIT I.

The President of the United States of America to the marshal of the United States for the eastern district of New York and to his deputies or any or either of them:

Whereas, complaint on oath has been made to me, charging that George W. Beavers, at Washington in the District of Columbia on

the 11th day of July in the year one thousand nine hundred and one being then and there an officer and agent of the Government in the employ of and under the Post Office Department of the United States did knowingly and unlawfully receive and accept an obligation for the payment of money from one W. Scott Towers who was then and there an agent of the Elliott and Hatch Book-typewriter Company, that is to say, a draft on the Fourth National Bank of New York City for the sum of $350.00 payable to the order of said Towers and by the said Towers endorsed for payment, with intent that the action or decision of said Beavers in a matter then pending or to be brought before him for consideration in his official capacity should be influenced thereby, as by copy of complaint hereto annexed may more fully appear, and contrary to the statutes of the United States in such behalf made and provided.

Now therefore, you are hereby commanded, in the name of the President of the United States of America, to apprehend the said George W. Beavers wherever he may be found, and bring his
9 body forthwith before me, or some judge or justice of the United States, or other United States commissioner, that he may then and there be dealt with, for said offence, according to law.

Given under my hand and seal, this 3rd day of June in the year of our Lord one thousand nine hundred and four.

B. LINCOLN BENEDICT,
[L. S.] *United States Commissioner for the Eastern District of New York.*

10 EXHIBIT II.

Before Hon. B. Lincoln Benedict, U. S. Commissioner, Eastern District of New York.

In the Matter of the Complaint of THE UNITED STATES
vs.
GEORGE W. BEAVERS.

UNITED STATES OF AMERICA,
Eastern District of New York, County of Kings, } ss:

Frank E. Little being duly sworn, deposes and says that he is an inspector of the Post Office Department of the United States, and further says, on information and belief, that on the sixth day of October, in the year of our Lord nineteen hundred, and from thence until the first day of July, in the year of our Lord nineteen hundred and one, George W. Beavers, late of the city of Washington, in the said District of Columbia, at Washington aforesaid, in the said District, was an officer of the said United States and a person acting for and on behalf of the said United States in an official capacity under and by virtue of the authority of a department of

the Government thereof, that is to say, superintendent of salaries and allowances, in the office of the First Assistant Postmaster General of the said United States, in the Post-Office Department of the Government thereof, and during the period aforesaid did act as and perform the duties of such superintend-
11 ent of salaries and allowances; that on the said first day of July, in the year of our Lord nineteen hundred and one, and from thence until and on the twenty-fourth day of March, in the year of our Lord nineteen hundred and three, the said George W. Beavers was an officer of the said United States and a person acting for and on behalf of the said United States in an official capacity under and by virtue of the authority of a department of the Government thereof, that is to say, general superintendent of salaries and allowances, in the office of the said First Assistant Postmaster General of the said United States, in the Post-Office Department of the Government thereof, and during the last-mentioned period did act as, and perform, the duties of, such general superintendent; that by reason of his being such officer and person acting as aforesaid, under the law and the regulations theretofore and then pursuant to law prescribed and promulgated by the Postmaster-General of the said United States for the government of his department and the conduct of its officers and clerks, and in force during the said periods, he the said George W. Beavers was charged, amongst other things, with the consideration of orders and allowances for miscellaneous and incidental items of supplies, including furniture, and book-typewriting machines, called book-typewriters, for use in post-offices throughout the said United States, involving outlays and increases of expenditure of the moneys of the said United States appropriated by law for the service of the said Post-Office Department for the fiscal
12 years ending June thirtieth, nineteen hundred and one, June thirtieth, nineteen hundred and two, and June thirtieth, nineteen hundred and three, and also with procuring, in accordance with the methods provided by the said regulations and by law, from persons and corporations proposing to furnish the same, such supplies, furniture and book-typewriters for the use aforesaid, by open purchase or contract at the places and in the manner in which such supplies, furniture and book-typewriters were and are usually bought and sold between individuals, in case the public exigency did not require such purchases and contracts to be made by advertising for proposals respecting the same,—of the prescribing and promulgating of which said regulations he, the said George W. Beavers, during the periods aforesaid, there had notice; and that during the said periods, and by reason of his being and acting as such superintendent and general superintendent, it became and was the duty of the said George W. Beavers, when discharging the duties with which he was so charged as aforesaid, carefully to guard the interests of the said United States, to observe the laws thereof, and the regulations aforesaid, and to preserve those interests in considering and making allowances for and procuring such miscellaneous and inci-

dental items of supplies and furniture as aforesaid, and by all reasonable means and in the manner provided by law and the regulations aforesaid to secure terms as favorable to the said United States as possible when making contracts with and securing from persons and corporations proposing to furnish such supplies, furniture and book-
typewriters for the said Post-Office Department and for
13 the use aforesaid, involving expenditures of the moneys appropriated as aforesaid, and by all reasonable and lawful means to obtain by purchase or contract such supplies and furniture, for that department, out of the same moneys, as cheaply as possible; and that because, special trust and confidence were reposed in him by his superior officers the said Postmaster General and First Assistant Postmaster General, and by the persons for the time being acting as such superior officers, by reason of his being such officer and person as aforesaid, it then and there also became and was the duty of the said George W. Beavers, under the law and the said regulations, faithfully and truthfully to advise his said superior officers, or the persons acting as such, of and concerning all the matters requiring their supervision and notice and pertaining to the discharge of his, the said George W. Beavers' said duties, and to inform them truly and in good faith concerning all allowances, contracts, undertakings, orders, and purchases considered by him in the discharge of his said duties, and concerning all bills or accounts rendered against the said United States and the said Post-Office Department in connection with such allowances, contracts, undertakings, orders and purchases, and especially in connection with allowances, contracts, undertakings, orders and bills or accounts made, entered into and rendered in connection with the purchase of certain furniture and book-typewriters hereinafter mentioned; and that one W. Scott Towers, late of Washington aforesaid, during the periods aforesaid, was an agent of the
Elliott & Hatch Book Typewriter Company, a corpo-
14 ration theretofore organized under the laws of the State of New York, and then existing under that name and engaged in the business of manufacturing and selling certain book-typewriting machines, called book-typewriters and at divers times during the said first-mentioned period under the circumstances hereinafter set forth, did as such agent of the said corporation, sell and furnish a large number, to wit: fourteen, of such book-typewriters to the said Post-Office Department, at the price of two hundred dollars each, that is to say, one book-typewriter each for the post-office of the said United States at Columbia, South Carolina, East Liverpool, Ohio, Charleston, South Carolina, Helena, Montana, Rochester, New York; Kingston, New York; and Roanoke, Virginia, and seven book-typewriters for the post office of the said United States at Boston, Massachusetts, which said book-typewriters were so sold and furnished to the said Post-Office Department on divers days during the said first-mentioned period; and that during the said first-mentioned period, to wit, on the said sixth day of October, in the year of

our Lord nineteen hundred, the said George W. Beavers and W. Scott Towers did enter into and unlawful and corrupt agreement whereby the said W. Scott Towers, agent of the said corporation as aforesaid, undertook and promised on behalf of the said corporation to pay to him the said George W. Beavers, for the own personal use and benefit of him the said George W. Beavers, form time to time as the said corporation itself received payment therefor, and while he continued to be such officer and person acting in an official capacity under and by virtue of the authority of the said Post-Office Department as
15 aforesaid, the sum of twenty-five dollars out of each sum of two hundred dollars paid to the said corporation, out of the moneys appropriated as aforesaid, for purchasing the said book-typewriters for the said Post-Office Department; and that the said George W. Beavers afterwards, to wit, on the eleventh day of July in the year of our Lord nineteen hundred and one, during the last mentioned period, while he the said George W. Beavers was still an officer of the said United States as aforesaid, and a person acting for and on behalf of the said United States in an official capacity as aforesaid, and in pursuance of the said unlawful and corrupt agreement, at Washington, aforesaid in the said District of Columbia, unlawfully did receive from the said W. Scott Towers, agent of the said corporation, as aforesaid, a certain obligation for the payment of money, to wit, a draft dated that day, numbered 139946, drawn by the Citizen's National Bank of Washington City, in the said District of Columbia, upon the Fourth National Bank of New York City, New York, for the payment of the sum of three hundred and fifty dollars to the order of the said W. Scott Towers, and by the said W. Scott Towers endorsed in blank and this with intent on the part of him the said George W. Beavers, to have his decision and action on a matter then pending and thereafter to be brought before him in his said official capacity and in his place of trust influenced thereby to the detriment of the said United States, that is to say, to have his decision and action in the matter of then and thereafter making allowances for and procuring for the said Post-Office Department, in
16 the manner aforesaid, from the said corporation, book-typewriters of the kind aforesaid, otherwise than in the manner in which such articles are usually bought and sold between individuals, and not as cheaply as possible, and at a price greatly in excess of the price at which the same articles could and would have been procured for the said Post-Office Department if he the said George M. Beavers had honestly discharged his said duties and not entered into and executed the said unlawful and corrupt agreement with the said W. Scott Towers as aforesaid, that is to say, twenty-five dollars in excess upon each of the said book-typewriters,—and with intent on the part of him the said George W. Beavers to have his action in the matter of faithfully and truthfully advising his said superior officers, or the persons acting as such, of and concern-

ing the discharge of his said duties, influenced thereby adversely to his true duty and to the interests of the said United States, in such manner as to cause him to connive at and allow the fraud on the said United States involved in the said unlawful and corrupt agreement; all of which was against the peace of the United States of America, and their dignity, and contrary to the form of the statute of the said United States in such case made and provided, and all of which acts and facts and circumstances hereinbefore set forth are more particularly set forth and contained in an indictment against the said George W. Beavers duly found by a grand jury in the supreme court of the District of Columbia, holding a criminal court, for the April term, in the year of our Lord one thousand nine hundred and three, duly filed in open court in said court and Dis-
17 trict upon the fifth day of October nineteen hundred and three, an exemplified copy of which indictment is hereto annexed and marked Exhibit "A," and which is made a part of this complaint and to which for more particularity reference is hereby made; that at the said April term of the said supreme court of the District of Columbia, the grand jurors for the United States of America, inquiring in and for the said District of Columbia, duly found the indictment hereinbefore referred to, charging the said George W. Beavers with the offence hereinbefore set forth, that is to say, with the same offence contained and set forth, in said indictment, which indictment, as aforesaid, was duly filed in open court in said court and said District upon the said fifth day of October nineteen hundred and three, to which indictment reference has been heretofore and is hereby made and an exemplified copy of which is hereto attached and called Exhibit "A;" that after the filing of the said indictment and upon the third day of November in the year nineteen hundred and three, a bench warrant duly issued out of said supreme court of the District of Columbia, holding a criminal court, for the arrest of the said George W. Beavers, a duplicate of which original warrant is hereto attached, which is marked Exhibit "B."

Deponent further says that the said George W. Beavers has not been found within the said District of Columbia, and is not now within the said District of Columbia, but is within the eastern district of New York in the borough of Brooklyn, New York city, New York.

18 Deponent further says that the source of his information and the grounds of his belief as to the allegations hereinbefore stated to be alleged upon information and belief are the exemplified copy of the said indictment hereinbefore referred to and attached hereto as Exhibit "A" and the duplicate original of the said bench warrant hereto attached and marked Exhibit "B."

Deponent further says that he is personally acquainted with the said George W. Beavers and knows that he is the person mentioned and described in said indictment and charged with the offence therein set forth.

FRANK E. LITTLE, *P. O. Insp'r.*

Subscribed and sworn to before me this first day of June, 1904.

B. LINCOLN BENEDICT,
U. S. Commissioner, Eastern District of New York.

19 EXHIBIT III.

In the Supreme Court of the District of Columbia, Holding a Criminal Term.

THE UNITED STATES vs. GEORGE W. BEAVERS. } Criminal Number 23954. Indicted for Violation of the Section 5501, R. S. U. S.

The President of the United States to the United States marshal for the District of Columbia, Greeting:

You are hereby commanded to take the defendant George W. Beavers, if he is found in your district, and him to have before the criminal court for the said District of Columbia (immediately) to answer the United States touching the offence charged against him.

Hereof fail not, and have there then this writ so endorsed as to show how you have executed it.

Witness, the Honorable Harry M. Clabaugh, chief justice of said court, the 3d day of November, 1903.

[SEAL.]

J. R. YOUNG, *Clerk*,
By A. W. SMITH,
Assistant Clerk.

20 The warrant is endorsed as follows:

Criminal court No. 1 Criminal number 23954. United States against George W. Beavers. Bench warrant. Issued November 3rd, 1905. Marshal's return —— —— U. S. marshal.

21 EXHIBIT IV.

The Supreme Court of the District of Columbia, Holding a Criminal Court, in the April Term of the Year of Our Lord One Thousand Nine Hundred and Three.

THE DISTRICT OF COLUMBIA, *S. C. T.*:

The grand jurors for the United States of America inquiring for the District of Columbia upon their oath present, that on the sixth day of October, in the year of our Lord one thousand nine hundred, and from thence until the first day of June, in the year of our Lord one thousand nine hundred and one, George W. Beavers, late of the city of Washington, in the said District of Columbia, at Washington aforesaid, in the said District, was an officer of the said United States and a person acting for and on behalf of the said United States in an official

capacity under and by virtue of authority of the department of the Government thereof, that is to say, superintendent of salaries and allowances, in the office of the First Assistant Post Master General of the said United States, of the Post Office Department of the Government thereof, and during the period aforesaid did act as and perform the duties of said superintendent of salaries and allowances; that on the said first day of July, in the year of our Lord one thousand nine hundred and one, and from thence until and on the 24th day of March, in the year of our Lord one thousand nine hundred and three, the said George W. Beavers was an officer of the said United States and a person acting for and on
22 behalf of the said United States in an official capacity under and by virtue of the authority of a department of the Government thereof, that is to say, general superintendent of salaries and allowances, in the office of the said First Assistant Post Master General of the said United States, in the Post Office Department of the Government thereof, and during the last mentioned period did act as and perform the duties of, said general superintendent; that by reason of his being such officer and person acting as aforesaid, under the law and regulations thereof, then pursuant to law prescribed and promulgated by the Post-master General of the said United States for the government of his department and the conduct of its officers and clerks and in force during the said period, he the said George W. Beavers was charged, amongst other things, with the consideration of orders and allowances for miscellaneous and incidental items and supplies, including furniture, and book-typewriting machines, called book-typewriters, for use in post offices throughout the said United States involving outlays and increase and expenditure of the monies of the said United States appropriated by law for the service of the said Post Office Department for the fiscal years ending June thirtieth, one thousand nine hundred and one, June thirtieth one thousand nine hundred and two and June thirtieth one thousand nine hundred and three, and also with procuring, in accordance with the methods provided by the said regulations and by-law, from persons and corporations proposing to furnish the same, such supplies, furniture and book-typewriters for the use aforesaid, by
23 open purchase or contract at the places and in the manner in which said supplies, furniture and book-typewriters were and are usually bought and sold between individuals, in case the public exigency did not require such purchases and contracts to be made by advertisement for proposals respecting the same,—in the prescribing and promulgation of which said regulations he, the said George W. Beavers, during the periods aforesaid, then had notice; and that during the said periods, and by reason of his being and acting as such superintendent and general superintendent, it became and was the duty of the said George W. Beavers, when discharging the duties with which he was so charged as aforesaid, carefully to guard the interests of the said United States, to observe the laws

thereof, and the regulations aforesaid, and to preserve those interests in considering and making allowances for and procuring such miscellaneous and incidental items and supplies and furniture as aforesaid, and by all reasonable means and in the manner provided by law and the regulations aforesaid to secure terms as favorable to the said United States as possible when making contracts with and securing from persons and corporations proposing to furnish such supplies, furniture and book-typewriters for the said Post-Office Department and for the use aforesaid, involving expenditures when the monies appropriated as aforesaid and by all reasonable and lawful means to obtain by purchase or contract such supplies and furniture for that department, out of the same monies, as cheaply as possible; and that because, as the grand jurors aforesaid, upon their oath aforesaid, charging the fact to be, special trust and confidence were reposed in him by his superior officers the
24 said Post Office Master General and First Assistant Post Office Master General, and by the persons for the time being acting as such superior officers, by reason of his being such officer and person as aforesaid, it then and there also became and was the duty of the said George W. Beavers, under the law and the said regulations, faithfully and truthfully to advise his said superior officer or the person acting as such, of and concerning all the matters requiring their supervision and notice and pertaining to the discharging of his the said George W. Beavers' said duties, and to inform them truly and in good faith concerning all allowances, contracts, undertakings, orders and purchases considered by him in the discharge of his said duties, and concerning all bills or acts rendered against the said United States and the said Post-Office Department in connection with such allowances, contracts, undertakings, orders and purchases and especially in connection with allowances, contracts, undertakings, orders and bills or acts made, entered into and rendered in connection with the purchase of certain furniture and book-typewriters hereinafter mentioned.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that one W. Scott Towers, late of Washington aforesaid, during the periods aforesaid, was an agent of the
25 Elliott & Hatch Book-typewriter Company, a corporation theretofore organized under the laws of the State of New York and then existing under that name, and engaged in the business of manufacturing and selling certain book-typewriting machines, called book-typewriters, and at divers times during the said first mentioned period, under the circumstances hereinafter set forth, did, as such agent of the said corporation, sell and furnish a large number, to wit, fourteen, of such book-typewriters to the said Post Office Department, at the price of two hundred dollars each, that is to say, one book-typewriter each for the post office of the said United States at Columbia, South Carolina; East Liverpool, Ohio; Charleston, South Carolina; Helena, Montana; Rochester, New York; Kingston, New York; and seven book-typewriters for the post office

of the said United States at Boston, Massachusetts; which said book-typewriters were so sold and furnished to the said Post Office Department on divers days during the said first mentioned period.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that during the said first mentioned period, to wit, on the said sixth day of October in the year of our Lord nineteen hundred the said George W. Beavers and W. Scott Towers did enter into an unlawful and corrupt agreement whereby the said W. Scott Towers, agent of the said corporation as aforesaid, undertook and promised on behalf of the said corporation to pay to him the said George W. Beavers, for the own personal use and benefit of him the said George W. Beavers, from time to time as the said corporation itself received payment
26 therefor, and while he continued to be such officer and person acting in an official capacity under and by virtue of the authority of the said Post Office Department as aforesaid, the sum of twenty-five dollars out of each sum of two hundred dollars paid to the said corporation, out of the monies appropriated as aforesaid, for purchasing the said book-typewriters for the said Post Office Department; and that the said George W. Beavers afterwards, to wit, on the eleventh day of July in the year of our Lord nineteen hundred and one, during the last mentioned period, while he the said George W. Beavers was still an officer of the said United States as aforesaid, and a person acting for and on behalf of the said United States in an official capacity as aforesaid, and in pursuance of the said unlawful and corrupt agreement, at Washington, aforesaid, in the said District of Columbia, unlawfully did receive from the said W. Scott Towers, agent of the said corporation, as aforesaid, a certain obligation for the payment of money, to wit, a draft dated that day numbered 139946, drawn by the Citizen's National Bank of Washington City, in the said District of Columbia, upon the Fourth National Bank of New York City, New York, for the payment of the sum of three hundred and fifty dollars to the order of the said W. Scott Towers, and by the said W. Scott Towers endorsed in blank, and this with intent on the part of him the said George W. Beavers, to have his decision and action on a matter then pending and thereafter to be brought before him in his official capacity and in his place of trust influenced thereby to the detriment of the said United
27 States, that is to say, to have his decision and action in the matter of then and thereafter making allowance for and procuring for the said Post Office Department, in the manner aforesaid, from the said corporation, book-typewriters of the kind aforesaid, otherwise than in the manner in which such articles are usually bought and sold between individuals, and not as cheaply as possible, at a price greater in excess of the price at which the same articles could and would have been procured for the said Post Office Department if he the said George W. Beavers had honestly discharged his said duties and not entered into and executed the said unlawful and corrupt agreement with the said W. Scott Towers as aforesaid, that

is to say, twenty-five dollars in excess upon each of the said book-typewriters,—and with intent on the part of him the said George W. Beavers to have his action in the matter of faithfully and truthfully advising his said superior officers, or the persons acting as such, of and concerning the discharge of his said duties, influenced thereby adversely to his true duty and to the interest of the said United States, in such a manner as to cause him to connive at and allow the fraud on the said United States involved in the said unlawful and corrupt agreement; against the peace and dignity of the said United States and contrary to the form of the statute of the said United States in such case made and provided.

2. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said George W. Beavers, on the 11th day of July, in the — of our Lord nineteen hundred and one, at Washington aforesaid, in the District of Columbia so being general
28 superintendent of *of* salaries and allowances and a person acting for and on behalf of the said United States in an official capacity under and by virtue of the authority of the Post Office Department of the Government thereof, as in the first count of this indictment set forth, and same having entered into the unlawful and corrupt agreement in this count mentioned, further in pursuance of the said unlawful and corrupt agreement, with the said several intents on his part set forth in the first count, and under the circumstances and condition- therein mentioned unlawfully did receive from the said W. Scott Towers, agent of the corporation in the said first count mentioned, a certain contract, promise and gratuity, for the payment of money, that is to say, a draft for three hundred and fifty dollars, of the value of three hundred and fifty dollars, in the said first count of this indictment described, against the peace and dignity of the said United States, and contrary to the form of the statute in the same case made and provided.

3. And the said grand jurors aforesaid, upon their oath aforesaid, do further present, that the said George W. Beavers on the said eleventh day of July, in the year of our Lord, nineteen hundred and one, at Washington aforesaid, in the said District of Columbia, so being general superintendent of salaries and allowances and a person acting for and on behalf of the said United States, in an official capacity under and by virtue of the authority of the Post Office Department of the Government thereof as in the first count of this indictment set forth, and so having entered into the unlawful
29 and corrupt agreement in that count mentioned, further in pursuance of the said unlawful and corrupt agreement with the said several intents on his part set forth in the said first count, and under the circumstances and conditions therein mentioned, unlawfully did accept and receive from the said W. Scott Towers, agent of the corporation in the said first count mentioned, certain money, that is to say, the draft for three hundred and fifty dollars, of the value of three hundred and fifty dollars, in the said first count of this indictment described; against the peace and dignity

of the said United States, and contrary to the form of the same in such case made and provided.

(Signed) MORGAN H. BEACH,
United States Attorney.

30 Indorsements on indictment: Filed in open court, October 5th, 1903 J. R. Young, clerk. No. 22954 United States *vs.* George W. Beavers Violation of section 5501 R. S. U. S. Witnesses: H. J. Gensler, A. T. Brice, George D. Ashton, E. L. McKee, M. D. Helm, E. H. Schley, Charles Flynn Howard M. Jacobs, Mrs. H. J. Gensler, Jr. A true bill. A. M. McLachen, foreman.

31 EXHIBIT V.

United States Circuit Court for the Southern District of New York.

UNITED STATES
against
GEORGE W. BEAVERS.

UNITED STATES OF AMERICA,
Southern District of New York, City of New York, } ss:

Be it remembered that on this 24th day of May, 1904, before me, George B. Adams, judge of the district court of the United States, in and for the southern district of New York, personally came George W. Beavers, as principal and James R. Brown as surety and jointly and severally acknowledged themselves to owe the United States of America the sum of ten thousand ($10,000) dollars, to be levied on their goods and chattels, lands and tenements if default be made in the condition following, to wit: Whereas on the 24th day of May, 1904, the said George W. Beavers did surrender himself into the custody of William Henkel, United States marshal for the southern district of New York for the purpose of removal to the eastern district of New York, under the warrant of removal issued on November 10th, 1903, by Hon. George C. Holt, judge of the district court for the southern district of New York.

Now therefore, the condition of this recognizance is such that if the said George W. Beavers shall personally appear before
32 the circuit court of the United States, for the eastern district of New York, held in the city of Brooklyn in the district aforesaid, on the first day of the next regular term for the trial of bail cases then and there to answer unto an indictment pending therein for violation of section 1781 of the Revised Statutes of the United States, presented to said court against him on the 23rd day of July, 1903, by the grand jury of the United States within and for the eastern district of New York, and then and there render himself into the jurisdiction of the said court and obey and abide the orders

of said court and not depart therefrom without the leave of said court, then this recognizance to be void; otherwise to remain in full force and virtue.

GEORGE W. BEAVERS. [SEAL.]
JAMES R. BROWN.

Taken and acknowledged before me the day and year first above written.

GEO. B. ADAMS, *U. S. D. J.*

SOUTHERN DISTRICT OF NEW YORK, *ss:*

James R. Brown of 510 West 157th street in the city of New York being duly sworn, says that he is worth the sum of twenty thousand dollars over and above all his just debts and liabilities.

JAMES R. BROWN.

Sworn to and subscribed before me this 24th day of May, 1904.

GEORGE B. ADAMS, *U. S. D. J.*

Recognized approved as to form and sufficiency.

HENRY L. BURNETT,
U. S. Attorney.

33 EXHIBIT V.

UNITED STATES
vs.
GEORGE W. BEAVERS.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

James R. Brown, being duly sworn, says that he resides at 510 West 157th street, in the city of New York, borough of Manhattan; that he desires to be accepted as surety upon the annexed recognizance for the appearance of George W. Beavers for trial in the United States circuit court for the eastern district of New York, and that for the purpose of inducing the United States to accept him as such surety, he makes the following statement, to wit:

That he is the owner in fee simple of all that certain lot, piece or parcel of land, with the buildings thereon, situate and being in the county of New York, and known as Nos. 49 and 51 East 131st street, county of New York, borough of Manhattan; that the value of said property is at least the sum of sixty thousand dollars ($60,000.); that the same are subject to mortgages in the aggregate amount of forty-two thousand dollars ($42,000.00); that there are no other liens of any sort whatsoever thereon. That he is also the owner

in fee simple of all that certain lot, piece or parcel of land, with the buildings thereon, situate, lying and being in the county of New York and known as No. 446 West One hundred and twenty-fourth street, New York city, borough of Manhattan, and that the
34 value thereof is at least the sum of thirty thousand dollars ($30,000.00), and that the same is subject to a mortgage of twenty-one thousand dollars ($21,000) that there are no other mortgages or liens of any nature whatsoever thereon. That there are no judgments against him in this city or elsewhere; that he is not surety upon any other recognizance, and that he is worth at least the sum of twenty thousand dollars over and above all his debts, liabilities and obligations.

JAMES R. BROWN.

Sworn to before me this 24th day of May, 1904.

GEO. B. ADAMS, *U. S. D. J.*

35 EXHIBIT VI.

MAY 27, 1904.

Messrs. Morgan & Seabury, 290 Broadway, New York.

GENTLEMEN: You will please take notice that in the case of the *United States vs. George W. Beavers* you are hereby required to produce the defendant before the circuit court of the United States in and for the eastern district of New York at the court-room of said court in the Federal building, borough of Brooklyn, city of New York, N. Y., on Wednesday, the first of June, 1904, at ten o'clock in the forenoon of that day, for the purpose of pleading to the indictments heretofore found by the grand jury of this district against the said defendant.

Respectfully yours,

(Signed) WM. J. YOUNGS,
U. S. Attorney.

36 EXHIBIT VII.

The President of the United States of America to the marshal of the United States for the southern district of New York and to his deputies of any or either of them:

Whereas, one George W. Beavers has been arrested and imprisoned in this district by Samuel M. Hitchcock, an United States commissioner for the southern district of New York for an offence alleged to have been committed in another district, that is to say, for having on the 25th day of July in the year one thousand nine hundred at the eastern district of New York in the borough of Brooklyn, being at the time an officer of the Government of the United States, that is to say, superintendent of salaries and allowances in the office of

the First Assistant Postmaster General of the United States in the city of Washington, District of Columbia, and as such officer being duly charged amongst other things with the consideration of allowances for expenditures and with the procuring of contracts for supplies and with making purchases of supplies in pursuance of rules and regulation—of which the said Beavers had notice and in pursuance of the fraudulent agreement theretofore made by the said Beavers with the Edward J. Brandt-Dent Company, whereby the said Beavers was to recommend and procure contracts for the purchase from said company by the said Postmaster General, for the use of the department of 250 automatic cashiers upon conditions that said Beavers out of the
37 monies received by said company from such purchase should receive a certain portion and in pursuance of said fraudulent agreement and because of his having contrary to his said duties and trust fraudulently procured and aided in procuring for the said company the business and contract aforesaid, and the said company had furnished said cashiers to the said Post Office Department and had been paid for the same the said Beavers did on said day and place while still being such officer receive from said company the sum of $810.00 as the consideration of his having procured the business and contract aforesaid for the said Edward J. Brandt-Dent Company as by reference to the original warrant of arrest and the commitment endorsed thereupon which are hereto attached, will more fully and at large appear, and

Whereas, the said eastern district of New York is that in which trial of said offence is to be had and the United States attorney of this district having applied to me for a warrant of removal under the provisions of section 1014 of the Revised Statutes of the United States.

Now therefore, you are hereby commanded in the name of the President of the United States of America, to remove the said George W. Beavers forthwith to the eastern district of New York, and to safely deliver him to the marshal of said district or to such person as shall be by the said marshal deputized to receive him.

Given under my hand this 10th day of November, in the year one thousand nine hundred and three.

GEORGE C. HOLT,

38 *United States District Judge, Southern District of New York.*

Attest:

—— ——, *Clerk.*

The marshal is directed not to execute this warrant until 5 p. m. this day November 10, 1903.

GEORGE C. HOLT, *J.*

39 (Endorsements on back.)

United States circuit court. The United States of America *vs.* George W. Beavers. Warrant of removal. Henry L. Burnett, U. S. attorney.

I do hereby acknowledge the receipt from William Henkel, United States marshal for the southern district of New York, of the body of the within-named George W. Beavers, together with a copy of the within warrant.

Dated, Brooklyn, N. Y. ——, 1903.

——— ———,
U. S. Marshal.

I do hereby certify that there was this day filed in my office the original warrant of removal, of which the within is a copy.

Dated, Brooklyn, N. Y. ——, 1903.

——— ———,
Clerk for *the United States Circuit Court for the Eastern District of New York.*

40 EXHIBIT VIII.

UNITED STATES OF AMERICA, }
Eastern District of New York. }

I, B. Lincoln Benedict, clerk of the circuit court of the United States of America for the eastern district of New York, do hereby certify that the warrant annexed to this certificate is a true copy of the original on file and remaining of record in my office and of the return of the United States marshal thereon.

In testimony whereof I have caused the seal of the said court to be hereunto affixed at the borough of Brooklyn, city of New York, in the eastern district of New York, this 3rd day of September, in the year of our Lord one thousand nine hundred and three.

B. LINCOLN BENEDICT, *Clerk.*

[Seal as in certificate on indictment.]

To the marshal of the United States of America for the eastern district of New York and to his deputies or any or either of them:

Whereas, at a circuit court of the United States of America for the eastern district of New York, began and held at the borough of Brooklyn, city of New York within and for the district aforesaid, on the 22nd day of July, in the year of our Lord one thousand nine hundred and three, the grand jurors in and for the said dis-

trict brought into the said court a true bill of indictment
41 against George W. Beavers for having on the 25th day of July, 1900, he the said George W. Beavers being then and there an officer in the employ of the Government of the United States, received compensation, that is to say, a check for the sum of eight hundred and ten dollars, wilfully, knowingly and unlawfully; from the Edward J. Brant-Dent Company in payment for services for procuring a contract from the United States Government for the purchase of 250 Brandt automatic cashiers by the said United States Government, the said check being drawn by one Edmund H. Driggs upon the First National Bank of Brooklyn to the order of the said George W. Beavers, as by the said indictment now remaining on file and of record in the said court, may more fully appear; to which indictment the said George W. Beavers has not yet appeared or pleaded.

Now therefore you are hereby commanded, in the name of the President of the United States of America to apprehend the said George W. Beavers and him bring before the said court at the United States court room in the borough of Brooklyn, city of New York, the 14th day of August, in the year of our Lord one thousand nine hundred and three.

B. LINCOLN BENEDICT, *Clerk.*

WILLIAM J. YOUNGS,
U. S. Attorney.

(Endorsements on bench warrant.)

On first division of back: The within defendant not found.
42 Charles J. Haubert, U. S. marshal. September 3, 1903.

On second division of back: Exhibit B. United States circuit court. The United States of America *vs.* George W. Beavers. Indictment. Bench warrant. William J. Youngs, U. S. attorney.

Endorsed: Petition. Filed June 17, 1904.

43 The President of the United States to the U. S. marshal for the eastern district of New York, Greeting:

We command you that you have the body of George W. Beavers by you imprisoned and detained as it is said, together with the time and cause of such imprisonment and detention by whatever name the said George W. Beavers shall be called or charged before a stated term of the circuit court of the United States for the eastern district of New York, to be held in the Post Office building in the city of New York, borough of Brooklyn, on the 17th day of June, 1904, at 2 o'clock in the afternoon to do and receive what then and there shall be considered concerning said George W. Beavers, and have then and there this writ.

Witness: Honorable Edward B. Thomas judge of the district

court of the United States for the eastern district of New York, the 17th day of June, 1904.

Test:

[SEAL.] B. LINCOLN BENEDICT, *Clerk.*

MORGAN & SEABURY,
Att'ys for Petitioner.

Office and P. O. address 290 Broadway, borough of Manhattan, New York city.

Writ allowed
EDWARD B. THOMAS, *U. S. J.*

Endorsed: Writ of *habeas corpus* Filed June 17, 1904.

44 United States Circuit Court, Eastern District of New York.

In the Matter of the Application of GEORGE W. BEAVERS for a Writ of *Habeas Corpus*.

UNITED STATES OF AMERICA,
Eastern District of New York, } ss:

Charles J. Haubert, being duly sworn, deposes and says that he is United States marshal for the eastern district of New York; that he has read the verified petition of George W. Beavers for the writ of *habeas corpus*, petitioned for herein.

Deponent further says that the said George W. Beavers is in his custody, under and by virtue of a warrant duly issued upon a verified complaint, by B. Lincoln Benedict, United States commissioner for the eastern district of New York, which warrant bears date the third day of June, in the year one thousand nine hundred and four, the memorandum endorsed on said warrant being "June 17, 1904, defendant appears in pursuance of parole. No bail being tendered, defendant is committed to custody of marshal for examination. B. Lincoln Benedict, commissioner." That by virtue of the said commitment hereinbefore recited, your deponent took the said George W. Beavers into his custody upon the said 17th day of

45 June, 1904, and since that time has detained him in such custody. Deponent refers to the original warrant and endorsement now in his possession which he hereby makes a part of this return and a copy of which is hereto annexed and marked Exhibit A.

Deponent denies that the said George W. Beavers is restrained of his liberty without due process of law, that the arrest under the process hereinbefore set forth is void or without force and effect, that the restraint and detention of the said George W. Beavers under said process is illegal or in violation of the rights of the said George W. Beavers under the Constitution of the United States.

Deponent further denies that he had no authority to arrest the said George W. Beavers, the petitioner herein, under the said warrant, or that the said United States commissioner had no jurisdiction to issue the said warrant or to require bail from the said George W. Beavers and to hold him in default thereof.

Deponent further denies that the said George W. Beavers has a right to remain in the eastern district of New York at his pleasure or until he is tried upon any indictment or until said indictment is quashed or otherwise disposed of, and also denies that the arrest made by your deponent in obedience of the warrant hereinbefore set forth and the restraint of the said George W. Beavers under the said warrant and the commitment of the said commissioner endorsed thereon, is in violation of the constitutional right of the said George W. Beavers not to be restrained without due process of law; and

46 your deponent further denies that the said commissioner is without jurisdiction or authority to arrest, bail or commit the said petitioner, George W. Beavers, while he is within the jurisdiction of the United States authorities in the eastern district of New York, pending his pleading to any indictment in said eastern district of New York.

Deponent alleges that he has no information sufficient to form a belief as to the other allegations contained in said petition, and therefore denies the same.

CHARLES J. HAUBERT.

Sworn to before me this 17th day of June, 1904.

B. LINCOLN BENEDICT,
U. S. Commissioner.

UNITED STATES OF AMERICA, *Eastern District of New York*, } ss:

Charles J. Haubert, being duly sworn, deposes and says that he is United States marshal for the eastern district of New York and the person who made the foregoing deposition; that he has read the same and knows the contents thereof, and the same are true, except as to those matters therein alleged to be stated on information and belief, and as to those matters he believes it to be true.

CHARLES J. HAUBERT.

Sworn to before me this 17th day of June, 1904.

B. LINCOLN BENEDICT,
U. S. Commissioner.

47 EXHIBIT A.

Copy.

The President of the United States of America to the marshal of the United States for the eastern district of New York, and to his deputies, or any or either of them:

Whereas, complaint on oath has been made to me, charging that George W. Beavers at Washington in the District of Columbia on the 11th day of July in the year one thousand nine hundred and one, being then and there an officer and agent of the Government in the employ of and under the Post Office Department of the United States, did knowingly and unlawfully receive and accept an obligation for the payment of money from one W. Scott Towers who was then and there an agent of the Elliott and Hatch Book Type Writer Company, that is to say, a draft on the Fourth National Bank of New York City for the sum of $350.00 payable to the order of said Towers and by said Towers endorsed for payment, with intent that the action or decision of said Beavers in a matter then pending or to be brought before him for consideration in his official capacity should be influenced thereby, as by a copy of said complaint hereto annexed may more fully and at large appear, and contrary to the statutes of the United States in such behalf made and provided.

Now therefore, you are hereby commanded, in the name of the President of the United States of America, to apprehend the said George W. Beavers wherever he may be found, and bring his
48 body forthwith before me, or some judge or justice of the United States, or other United States commissioner, that he may then and there be dealt with, for said offence according to law.

Given under my hand and seal, this 3d day of June in the year of our Lord one thousand nine hundred and four.

[SEAL.] B. LINCOLN BENEDICT,
United States Commissioner for the Eastern District of New York.

49 Endorsements.

U. S. commissioner's office eastern district of New York. The United States of America vs. George W. Beavers. Warrant to apprehend. Bail in $10,000. Filed June 8, 1904.

The within named George W. Beavers arrested and before the commissioner, Dated June 8, 1904 Chas. J. Haubert U. S. marshal June 8, 1904.—Hearing on bail had. Hearing on charges adjourned to Monday June 13th, 1904, at 9:45 a. m. B. Lincoln Benedict U. S. commissioner.

June 13, 1904.—Hearing had, testimony taken. Def't remanded to custody of marshal. Hearing adjourned to Monday June 20, 19 04, 10:30 a. m. Def't paroled in custody of counsel till Friday June 17th 10 a. m. B. Lincoln Benedict U. S. com.

June 17, 1904.—Def't appears in pursuance of parole, no bail being desired, def't is committed to custody of the marshal for examination. B. Lincoln Benedict, U. S. com.

Endorsed: Return to writ of *haveas corpus* Filed June 17, 19 04.

50 United States Circuit Court, Eastern District of New York.

In the Matter of the Application of GEORGE W. BEAVERS for a Writ of *Habeas Corpus*.

Before Hon. Edward B. Thomas, judge of the United States district court for the eastern district of New York.

The said petitioner, George W. Beavers, in answer to the return of the said Charles J. Haubert, marshal for the United States for the eastern district of New York, to the writ of *habeas copus* heretofore directed to him and duly issued by the Hon. Edward B. Thomas, on the 17th day of June, 1904.

First. Denies each and every allegation therein contained except as hereinafter specifically admitted.

Second. Further answering the said return the said petitioner alleges and re-avers each and every allegation in his petition contained, and makes them part hereof.

Third. The petitioner admits that he is in the custody of the marshal of the United States for the eastern district of New York by virtue of a warrant and commitment endorsed thereon as alleged in said return, and admits the correctness of the copy attached to the said return and marked Exhibit "A."

51 Wherefore petitioner prays that the writ be sustained and the petitioner discharged from custody.

GEORGE W. BEAVERS, *Petitioner.*

MORGAN & SEABURY,
Attorneys for Petitioner, 290 Broadway, New York City.

52 UNITED STATES OF AMERICA, }
Eastern District of New York, County of Kings, } *ss:*

George W. Beavers being duly sworn deposes and says, that he has read the foregoing traverse to the return of the said Charles J. Haubert, marshal as aforesaid, and knows the contents thereof; that the same is true in all respects to the knowledge of the deponent ex-

cept as to matters therein stated to be alleged on information and belief and that as to those matters he believes it to be true.

GEORGE W. BEAVERS.

Subscribed and sworn to before me this 17th day of June, 1904.

RICHARD P. MORLE,
U. S. Commissioner, E. Dist. of N. Y.

Endorsed: Traverse to return Filed June 17th, 1904

53 JUNE 17, 1904.

Stated Term.

Present: Hon. Edward B. Thomas, district judge holding the court.

In the Matter of the Application of GEORGE W. BEAVERS for a Writ of *Habeas Corpus*.

Defendant present.
Application for discharge of defendant.
Mr. Seabury argues for application.
Mr. Youngs argues against application.
Decision reserved. Briefs to be handed up.
Defendant directed to remain in custody of U. S. marshal but with permission to U. S. marshal to parole him in custody of his counsel till June 18, 1904.

54 United States Circuit Court, Eastern District of New York.

In the Matter of the Application of GEORGE W. BEAVERS for a Writ of *Habeas Corpus*. June 29, 1904.

Morgan & Seabury, attorneys for petitioner, William M. Seabury, of counsel.
Charles H. Robb, assistant attorney general. William J. Youngs, United States attorney.

THOMAS, *J.*:

In re Beavers, 125 F. R. 988, it appears from the opinion of Judge Holt, as follows:

"The petitioner was indicted by the Federal grand jury in the eastern district of New York. A warrant for his arrest was issued by the judge of "that district" * * *, but he was not found within that district. An application was thereupon made to Samuel M. Hitchcock, a United States commissioner in the southern district, for a warrant for his arrest and removal. A warrant was issued by

the commissioner, under which the petitioner was arrested and brought before him. The petitioner demanded an examination, and gave bail for his appearance before the commissioner. Subsequent to the finding of the indictment in the eastern district of New York, another indictment against the petitioner was found by the grand jury of the District of Columbia. A bench warrant was issued by the supreme court of the District of Columbia for his arrest under the indictment, but not being found within the District of Columbia, another application was made to Commissioner Hitchcock, in the southern district of New York, for his arrest and removal under the second indictment. A warrant on this second application was issued by the commissioner, under which he was arrested by the
55 marshal of the southern district of New York, and brought before the commissioner. The petitioner thereupon demanded an examination, and was again admitted to bail by the commissioner. The bail given upon the second arrest under the warrant issued upon the indictment in the District of Columbia subsequently surrendered the petitioner to the marshal for the southern district of New York, and thereupon the petitioner filed a petition in this court for this writ of *habeas corpus*, alleging that his second arrest was illegal."

The learned judge determined that the arrest on the second warrant should be vacated. Thereafter such proceedings were had that the defendant, at all times resisting, was ordered to be removed to the eastern district of New York, and gave bail for his appearance in the circuit court held in that district. He duly appeared, and being arraigned for pleading to three indictments found against him, by the grand jury for the eastern district of New York, moved to quash the indictments, and for a bill of particulars. But before such motions were heard, the defendant, after this court was duly advised of the purpose so to do, was arrested upon a warrant issued by a United States commissioner for the eastern district of New York, for the purpose of removing him to the District of Columbia. He was not physically detained upon such warrant pending the inquiry before the commissioner. The circuit court for the eastern district of New York deferred the hearing of the motions pending the hearing before the commissioner, for the purpose of allowing the warrant to be served upon the defendant, and to permit the proceedings to continue before the commissioner. Thereafter the petitioner applied for a writ of *habeas corpus*, which was granted by this court, the petitioner having
56 been surrendered to the marshal, who thereupon brought him to the court pursuant to the writ. The parties have been heard. The learned counsel for the petitioner has by oral argument and brief clearly set forth the petitioner's position, which is, that the commissioner had no power to issue the warrant, pending the disposition of the indictment in the eastern district, for the purpose of removing the petitioner to the District of Columbia; and that even if such power existed, the court should not allow such

proceedings for removal, until justice in its own jurisdiction shall have been administered. The contention that the commissioner has no power to entertain the proceeding is sought to be supported upon the well known principle, that the justice of one sovereignty must be satisfied before it will yield to the demands of another government, for the purpose of administering its justice. Perhaps the true statement is this: It is within the power of a government, acting through the proper department thereof, to refuse to surrender either property or persons to another government, while the administration of justice within its own borders demands their presence. Taylor *v.* Taintor, 16 Wall. 366. A State has full power to demand, that a person arrested upon a civil or criminal process within its border, shall remain amenable to its courts until there has been due administration of justice therein. But it will be observed that the exercise of this power is at the will of the State itself, expressed through its proper officers or tribunals, and that the person apprehended may not constrain such government, so having jurisdiction, to exercise its will, although for
57 the purpose of preserving his bail from forfeiture, or to save other default, he, or his sureties, should resist any attempt of any government to remove him from the control of the jurisdiction to which he is primarily bounden. But if he has not done nor suffered anything bringing him in default, of if the government first acquiring jurisdiction consents to his removal, and the defendant by removal is prevented from meeting his obligation to such government, he is no longer bound to respond. The rule of continuing obligation to the State having the person or thing in its actual or constructive control, is not for the benefit of the defendant, but for the protection of public justice within that State. It is a right that it alone may assert, although it is clearly the duty of the defendant to ask it to assert such right, that his bond may be relieved in case of refusal or waiver. In Taylor *v.* Taintor, *supra*, Mr. Justice Swayne states:

"It is the settled law of this class of cases that the bail will be exonorated where the performance of the condition is rendered impossible by the act of God, the act of the obligee, or the act of the law. Where the principal dies before the day of performance, the case is within the first category. Where the court before which the principal is bound to appear is abolished without qualification, the case is within the second. If the principal is arrested in the State where the obligation is given and sent out of the State by the governor, upon the requisition of the governor of another State, it is within the third. In such cases the governor acts in his official character, and represents the sovereignty of the State in giving efficacy to the Constitution of the United States and the law of Congress. If he refuse, there is no means of compulsion. But if he act, and the fugitive is surrendered, the State whence he is removed can no longer require his appearance before her tribunals, and all obli-

gations which she has taken to secure that result thereupon at once, *ipso facto*, lose their binding effect."

58 Observe the words, "In such cases the governor acts in his official character, and represents the sovereignty of the State," etc.

It is quite clear that it is for the governor of the State, upon requisition, to determine whether the public justice of his State shall be administered, before permitting the defendant to be subjected to the laws and tribunals of another State. He acts for the State, and his act binds the State in its several departments. But even if it be within the power of a court having jurisdiction of a defendant to thwart the command of the executive, as the defendant claims was done in Hobbs *v.* The State, (22 S. W. R. 1035) by the court of criminal appeals of Texas, yet the court itself has the power to subject its own administration to that of a foreign State. But wherever the power of removal may reside, the question involved is whether one government shall yield precedence to another, in the matter of the custody of the same defendant, for the purpose of trial. In the case at bar no such question exists. The United States is the common sovereign whose judicial power is vested in courts created by the Constitution or laws made pursuant thereto, and for convenience judicial departments and districts, subdividing the whole territory, have been established. The accuser in each artificial division of territory, wherein there is a localized court, is the same; its general penal statutes are usually common to the whole public domain; its justice alone is to be administered. "The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may,

59 from time to time, ordain and establish." But the sovereignty offended in criminal cases is always the United States, and the courts to whom the Constitution and Congress have confided the inquiry belong to one of the principal departments in which the governmental power resides. But the court acts only when the sovereign accuses, and the only constitutional limitation upon the General Government, as to locality of action, is that the accused shall be tried "by an impartial jury of the State and district wherein the crime shall have been committed." (Article VI, amendments.) Hence, the National Government is one sovereign, common to all judicial districts. Whether the laws have been violated in the eastern district of New York, or the District of Columbia, the same political body has been offended; it alone seeks vindication. Hence it is quite obvious that no question can arise similar to that where one government seeks to take a person from another jurisdiction, and each demands vindication of its own justice. But, as a State may consent to make its own demand secondary to that of another State, so the United States may yield, or may decline to yield, its rights first to vindicate its law and surrender the accused to another power. Much the more may it select in what order it will prosecute offences against itself. As in the case of a person

seized by the State for violation of its law, the State and not the person may determine whether the criminal justice of that State shall be first administered, before the surrender of the offender to another government for trial; so the Federal Government may determine the order of priority of trials for offences against it, or whether there shall be any trial
60 at all. The relative power of the executive or court to decide the order of arraignment does not seem difficult. If the executive department, acting through the Department of Justice, seeks the aid of the court to effect a removal to another district, it would be quite within the power of the court to retain the control of the defendant, for the purpose of trial within its district. But Congress has vested the initial power of prosecution in the district attorney, (sec. 771, U. S. R. S.) and has subjected him to the "general superintendence and direction" of the Attorney General, (sec. 362, U. S. R. S.) who in his turn is the head of the "executive department to be known as the Department of Justice." (Sec. 202, U. S. R. S.) And when, as in the present instance, the Attorney General asks that the defendant be removed to another district to meet an indictment against him there found, and the district attorney of this district coöperates for such removal, the court may, at least in the exercise of a sound judgment, permit such removal upon a proper case being made therefor. This does not mean that a defendant may be removed to another district, under conditions which would disturb the due administration of justice in the court where the defendant is held at the time, nor where the removal would work an injustice to the defendant in respect to the indictment pending in such court. In the case at bar it does not appear that the defendant will be injured by the removal, as to the indictment in this court. It is true that the Constitution gives him a right to a speedy trial, but it gives him a right to a speedy trial in
61 the District of Columbia, as well as in the eastern district of New York. The Constitution does not assure him the speedier trial in this district, nor enable him to select the court in which he shall first be tried. The vigor of his late struggle to prevent removal to this district does not harmonize with a desire for a speedy trial here. His absence defeated a possible trial at the May term, and another opportunity will not occur before October. The administration of justice elsewhere should not be delayed by his tardy appearance in this court.

Judge Holt held that the two proceedings in the southern district for removal to two several and distinct districts could not occur. The learned judge did not decide that after his removal to this district should have been perfected, he could not be removed to the District of Columbia, but pointed out that it was illogical to ask the commissioner to hold him for removal in two different directions at the same time. It may be that the learned judge would have been justified in deciding that the commissioner was simply asked to hold the defendant for removal, but that he had no power

to order removal, and that the question of the district to which he should be sent should await application to the court for his actual removal. But Judge Holt's solution of the question before him was direct, convenient, and practical. Why should the same commissioner be engaged in determining the question of holding for removal to different districts, when the defendant could be removed to but one, and why should the Government and the defendant be at
the expense and difficulty of determining the matter of a
62 double removal, when but a single removal was possible. Moreover, as this court had first asked for his removal to this district, it was quite within the power of the district court for the southern district of New York to award priority to such demand. It will, however, be noticed that the Government was not asking that court to award priority to the court in the District of Columbia, but to allow the commissioner to conduct two separate proceedings, looking to the removal of the defendant in two opposite directions. The Government, at the instance of district attorneys of two distinct districts, was pursuing two antagonistic inquiries at the same time, when it was evident that one or the other of the inquiries must prove useless. It is not perceived that the question decided by Judge Holt has any bearing upon the power of this court to release its control of the defendant. It is in its discretion to retain him for trial, or to send him elsewhere for arraignment. The executive department asks that he be sent elsewhere. No valid reason appears for rejecting its advice. It is urged that the Government elected to remove the defendant to this district, and that it should be bound by it. The proceeding for removal to this district was first taken, and that for removal to the District of Columbia followed. Judge Holt held that the second could not proceed with the first pending, therefore he vacated the arrest in the second proceeding. Thereupon the Government had the alternative of dropping the proceeding for removal to this district, and renewing the other, or of pursuing the first,
bringing the defendant to this district, securing his custody
63 and arraignment here, and thereafter removing him to the District of Columbia, for arraignment on the indictment there. In this manner an orderly opportunity of bringing the defendant into the several courts, where he was accustomed, was secured. In any case it is considered that the Government is not precluded now from instituting proceedings for removal to the other district. This court was advised by the district attorney of the proposed removal proceedings and acquiesced in them. In view of the defendant being under bail for his continuing appearance at this court, the commissioner neither required him to give bail nor to be imprisoned. As regards the commissioner, the defendant was free, and delivered himself up to the marshal that he might be brought up on this writ. This may have no legal importance, but illustrates that he was not burdened. It is concluded that the commissioner has power to entertain the proceedings before him, and that this

court is advised of no state of facts that requires it in its discretion to vacate or restrain them.

The writ should be dismissed.

EDWARD B. THOMAS, *U. S. J.*

64 At a stated term of the circuit court of the United States of America for the eastern district of New York, in the second judicial circuit, held at the United States court rooms, in the borough of Brooklyn, on the twenty-ninth day of June in the year of our Lord one thousand nine hundred and four.

Present: The Honorable Edward B. Thomas, district judge holding the court.

In the Matter of the Application of GEORGE W. BEAVERS for a Writ of *Habeas Corpus*.

A writ of *habeas corpus* having been issued herein upon the seventeenth day of June, 1904, directed to the marshal of the United States for the eastern district of New York as the person having the custody of the above named George W. Beavers, commanding the said Charles J. Haubert as said marshal to produce the body of the said George W. Beavers before the United States circuit court for the eastern district of New York at a term thereof to be held in the Federal building, borough of Brooklyn, county of Kings, New York, upon the said seventeenth day of June, 1904, and the said George W. Beavers having been produced at that time in said court by the said Charles J. Haubert, and a return to said writ of *habeas corpus* having been made and filed by the said Charles J. Haubert as such United States marshal aforesaid, and a traverse having been filed to said return by the said George W. Beavers, and a hearing having been had thereon upon the said sev-

65 enteenth day of June, 1904, and the proceeding thereon having been adjourned until this day, now, upon reading the said writ of *habeas corpus* and the petition of the said George W. Beavers, verified the 17th day of June, 1904, the return to said writ, verified the 17th day of June, 1904, and the traverse to said return, all of which papers are on file in the office of the clerk of this court, and due deliberation having been had thereon, and it appearing that the said Charles J. Haubert, as said United States marshal, has the custody of the said George W. Beavers, by virtue of a warrant of arrest issued to him by B. Lincoln Benedict, United States commissioner for the eastern district of New York, and the commitment endorsed thereon, upon the 17th day of June 1904, by said commissioner, which warrant bears date the third day of June, 1904, and which warrant directed the arrest and taking into custody of the said George W. Beavers upon a verified complaint recited in said warrant and that the said George W. Beavers was duly arrested and taken into custody by virtue and under the authority of said warrant, and upon his being arraigned before the said B. Lincoln

Benedict, United States commissioner as aforesaid, was duly committed, in default of the amount of bail which had been fixed by said commissioner, to the custody of the said marshal for examination, and it also appearing to my satisfaction that the said George W. Beavers is not restrained of his liberty under said commitment without due process of law but that the said commitment and the proceedings upon which said commitment was made were in all
66 respects properly and legally had, and that the said commissioner had jurisdiction over the subject matter of said complaint and had jurisdiction to issue the said warrant and to require bail of the said George W. Beavers and to hold him in default thereof, and after hearing William M. Seabury, Esquire, of counsel, on behalf of the said petitioner George W. Beavers, in support of said application, and Hon. Charles H. Robb, Ass't Att'y General of the U. S., and William J. Youngs, Esquire, United States attorney for the eastern district of New York, in opposition thereto, it is

Ordered, that the motion on said writ of *habeas corpus*, to discharge the said George W. Beavers, be, and it hereby is in all respects denied, and said writ of *habeas corpus* discharged, and that the said George W. Beavers be, and he hereby is delivered to and left in the custody and control of the said Charles J. Haubert, United States marshal for the eastern district of New York, to be held for examination before the said B. Lincoln Benedict, United States commissioner as aforesaid, under and by virtue of the said commitment of June 17, 1904.

EDWARD B. THOMAS, *U. S. J.*

Endorsed: Order dismissing writ of *habeas corpus* Filed and entered June 29, 1904

67 At a stated term of the circuit court of the United States in and for the eastern district of New York, held at the United States court house and post office building, in the borough of Brooklyn, city of New York, on the 5th day of July 1904.

Present: The Honorable Edward B. Thomas, district judge.

In the Matter of the Application of GEORGE W. BEAVERS for a Writ of *Habeas Corpus*.

GEORGE W. BEAVERS, Appellant, *against* CHARLES J. HAUBERT, United States Marshal in and for the Eastern District of New York.	Order as to Custody and Bail.

An appeal having been duly taken to the Supreme Court of the United States by the above named petitioner and appellant, from an order this day entered herein dismissing a writ of *habeas corpus*,

Now, on motion of Morgan & Seabury, it is

Ordered that pending the said appeal, the custody of the said George W. Beavers in this proceeding shall not be disturbed and that he remain in the custody of Charles J. Haubert, United States marshal in and for the eastern district of New York, and be kept and detained in such custody pending and until the determination of said appeal by the said Supreme Court of the United States and the further order of the court thereon, unless he give the bail hereinafter required.

(Signed) EDWARD B. THOMAS,
U. S. District Judge, Presiding in the Circuit Court.

On application of the appellant, it is

Ordered that Joseph G. Cochran, Esq., United States commissioner for the eastern district of New York, take recognizance in the sum of 5000[00] dollars for the appearance of the appellant, George W. Beavers, on the entry of the final order in the United States circuit court upon the mandate of the Supreme Court of the United States.

Dated the 5th day of July, 1904.

(Signed) EDWARD B. THOMAS,
U. S. District Judge.

Endorsed: Order as to custody of bail. Filed and entered July 5th, 1904.

68 In the Supreme Court of the United States.

In the Matter of the Application of GEORGE W. BEAVERS for a Writ of *Habeas Corpus*.

GEORGE W. BEAVERS, Appellant,
against
CHARLES J. HAUBERT, United States Marshal in and for the Eastern District of New York.

UNITED STATES OF AMERICA,
Eastern District of New York, } *ss:*

Be it remembered that on the 5th day of July, 1904, before me Joseph G. Cochran United States commissioner in and for the eastern district of New York, personally came George W. Beavers, as principal, and John McCormack and Henrietta A. Sedgwick as sureties and severally acknowledged themselves to owe to the United States of America, that is to say, the said George W. Beavers the sum of $5000.00 *dollars* and the said John McCormack the sum of $5000.00 *dollars* and the said Henrietta A. Sedgwick the sum of $5000 *dollars*, separately to be made and levied on their respective goods, chattels, lands and tenements to the said United States if default shall be made in the condition following, to wit:

Whereas the said George W. Beavers was detained in the
69 custody of Charles J. Haubert, United States marshal in and for the eastern district of New York, under a warrant of arrest issued by B. Lincoln Benedict, Esq., United States commissioner in and for the eastern district of New York, on the 3d day of June, 1904.

Whereas the said George W. Beavers made an application to the United States circuit court before Honorable Edward B. Thomas, district judge, on the 17th day of June, 1904, for a writ of *habeas corpus* directed to said Charles J. Haubert, Esq., requiring said marshal to bring George W. Beavers before said court together with the cause of his detention, and

Whereas the said Charles J. Haubert, on the 17th day of June, 1904, did make a return to said writ and did produce the said George W. Beavers before the said circuit court of the United States, and

Whereas on the 29th day of June, 1904 the said Honorable Edward B. Thomas, did make his final order dismissing the said writ of *habeas corpus*, and

Whereas the said George W. Beavers has appealed from said final order to the Supreme Court of the United States, and

Whereas the said Honorable Edward B. Thomas, United States district judge did thereupon allow such appeal and ordered that the said George W. Beavers be enlarged upon bail in the sum of $5,000.00 *dollars* for his appearance to answer the exigency and determination of said appeal and to personally abide the final decision and determination of the said Supreme Court of the United States in that behalf.

70 Now, therefore, the condition of this obligation is such that if the said George W. Beavers shall duly personally appear in the United States circuit court for the eastern district of New York, to answer the exigency and determination of said appeal and personally abide the final decision and determination of the said supreme court of the United States and of said circuit court of the United States, upon the mandate of the said supreme court of the United States and obey and abide the orders of said circuit court of the United States and not depart without leave upon the conditions aforesaid and upon the entry of said orders upon said appeal, then this recognizance to be void, otherwise to remain in full force and virtue.

HENRIETTA A. SEDGWICK.
GEORGE W. BEAVERS.
JOHN McCORMACK.

Taken and acknowledged before me the day and year first above written.

J. G. COCHRAN,
U. S. Commissioner.

EASTERN DISTRICT OF NEW YORK, ss:

Henrietta A. Sedgwick and John McCormack, being duly severally sworn, say and each of them say that he John McCormack resides at No. 448 Fifth avenue, borough of Brooklyn, N. Y., and she Henrietta A. Sedgwick resides at No. 1256 56th St., borough of Brooklyn, N. Y.; that each is worth the sum of ten thousand dollars over and above all his and her just debts and liabilities in property not exempt from execution.

JOHN McCORMACK.
HENRIETTA A. SEDGWICK.

Sworn to before me this 5th day of July, 1904.

J. G. COCHRAN,
U. S. Commissioner.

Recognizance approved as to form, amount and sufficiency.

EDWARD B. THOMAS, *U. L. S. J.*

71 Endorsed: Bond pending appeal. Filed July 5th, 1904.

72 Circuit Court of the United States for the Eastern District of New York.

In the Matter of the Application of GEORGE W. BEAVERS for a Writ of *Habeas Corpus*.

GEORGE W. BEAVERS, Appellant,
against
CHARLES J. HAUBERT, United States Marshal in and for the Eastern District of New York, Appellee.

The petition of the above named petitioner, George W. Beavers, for an order allowing an appeal to the Supreme Court of the United States from the final order hereinbefore entered in this case.

George W. Beavers the petitioner and appellant above named feeling himself aggrieved by the final order heretofore made and entered by this court in this case on the 29th day of June, 1904, whereby a writ of *habeas corpus* directed to Charles J. Haubert, United States marshal in and for the eastern district of New York, requiring the said marshal to bring and have your petitioner before this court together with the time and cause of his detention forthwith, for such action as might be proper in the premises, be and the same is hereby dismissed and discharged.

Now comes by Morgan & Seabury, his solicitors and counsel
73 and petitions this court for an order allowing your said petitioner to prosecute and appeal from such final order to the

Supreme Court of the United States under and according to the laws of the United States in such behalf made. Your petitioner is advised by counsel that there are grave doubts as to whether the arrest and detention of the petitioner referred to in the petition and exhibits attached thereto has not infringed the constitutional rights of your petitioner; that the commitment of your said petitioner and the restraint of his person referred to in said petition is without authority of law; and that the said United States marshal by whom your said petitioner was arrested as set forth in the said petition was without right or authority to arrest your petitioner and that the said United States commissioner before whom your said petitioner was arraigned as set forth in the said petition, had no jurisdiction to entertain any proceedings in respect of your said petitioner or to require bail of your said petitioner or commit him in default thereof and that your petitioner desires in good faith to submit the constitutional questions and other questions involved, to the Supreme Court of the United States for their determination.

Your petitioner will ever pray.

Dated July 5th 1904.

GEORGE W. BEAVERS.
MORGAN & SEABURY,
Attorneys for Petitioner.

Office and P. O. address, 290 Broadway, Manhattan, New York city.

74 UNITED STATES OF AMERICA, } ss.:
Eastern District of New York, }

I George W. Beavers being duly sworn, says that he is the petitioner above named and that the foregoing petition is true to his own knowledge except as to the matters therein stated to be alleged on information and belief and that as to those matters he believes it to be true.

GEORGE W. BEAVERS.

Sworn to before me this 5th day of July, 1904.

[SEAL.] PERCY G. B. GILKES,
Notary Public, Kings Co., N. Y.

The foregoing petition on appeal is granted and bail allowed Bond for cost is fixed at two hundred and fifty ($250.) dollars.

Done in open court this 5th day of July, 1904.

EDWARD B. THOMAS, *U. S. J.*

Endorsed: Petition on appeal. Filed July 5th, 1904.

75 Circuit Court of the United States for the Eastern District of New York.

In the Matter of the Application of GEORGE W. BEAVERS for a Writ of *Habeas Corpus*.

GEORGE W. BEAVERS, Appellant,
against
CHARLES J. HAUBERT, United States Marshal in and for the Eastern District of New York, Appellee.

SIR: Please take notice that George W. Beavers the petitioner above named hereby appeals to the Supreme Court of the United States from the final order made and entered on the 29th day of June, 1904, dismissing his writ of *habeas corpus* and from each and every part of said order.

Dated, Brooklyn, the 5th day of July, 1904.

Yours &c.,
MORGAN & SEABURY,
Attorneys & Counsellors for Petitioner.

Office & post office address, 290 Broadway, Manhattan, New York city.

To Hon. William J. Youngs, United States attorney in and for the eastern district of New York.

To Charles J. Haubert, Esq., United States marshal in and for the eastern district of New York.

76 To B. Lincoln Benedict, Esq., clerk of the circuit court of the United States, in and for the eastern district of New York, and United States commissioner in and for the eastern district of New York.

Endorsed: Notice of appeal. Filed July 5th, 1904.

77 In the Supreme Court of the United States.

In the Matter of the Application of GEORGE W. BEAVERS for a Writ of *Habeas Corpus*.

GEORGE W. BEAVERS, Appellant,
against
CHARLES J. HAUBERT, United States Marshal in and for the Eastern District of New York.
Assignment of Errors.

Now comes the petitioner, George W. Beavers, by Morgan & Seabury, his counsel in connection with his petition of appeal to the Supreme Court of the United States from an order of the circuit court of the United States in and for the eastern district of New

York, entered therein on the 29th day of June, 1904, dismissing and charging the writ of *habeas corpus* and makes and files the following assignment of errors:

The court erred:

1st. In dismissing and discharging the petitioner's writ of *habeas corpus* and remanding him to the custody of the marshal.

2nd. In refusing to discharge the said petitioner.

3rd. In holding that the arrest and restraint of the petitioner's liberty is legal.

4th. In holding that your petitioner was not then and there entitled to be discharged from the custody of the marshal.

78 5th. In holding that the restraint of your petitioner is not a violation of his constitutional right not to be deprived of his liberty without due process of law, guaranteed to him by the Constitution of the United States, article fifth of the amendments thereof.

6th. In holding that the said commissioner at the time of the arrest or arraignment of your said petitioner or at any other time had any jurisdiction, right or authority to issue a warrant for the arrest of your petitioner, to require bail of your petitioner or commit your said petitioner in default of such bail.

7th. In holding that your petitioner was in custody of the said Charles J. Haubert, United States marshal in and for the eastern district of New York, and deprived of his liberty by him by due process of law.

8th. In holding that the arrest and detention of your petitioner was not in violation of his constitutional rights.

9th. For other errors appearing on the record.

By reason whereof the petitioner prays that the said order dismissing and discharging the said writ of *habeas corpus* be reversed and that your petitioner be discharged from custody.

Dated, the 5th day of July, 1904.

GEORGE W. BEAVERS,
By MORGAN & SEABURY,
His Attorneys and Counsellors.

MORGAN & SEABURY,
Counsel for Petitioner, 290 *Broadway*,
Manhattan, New York City.

Endorsed: Assignment of errors. Filed July 5, 1904.

79 Supreme Court of the United States.

In the Matter of the Application of GEORGE W. BEAVERS for a Writ of *Habeas Corpus*.

GEORGE W. BEAVERS, Appellant,
against
CHARLES J. HAUBERT, United States Marshal in and for the Eastern District of New York, Appellee.

Know all men by these presents, that we, George W. Beavers as principal, and John McCormack and Henrietta A. Sedgwick as sureties, are held and firmly bound unto the United States of America in the full and just sum of two hundred and fifty ($250.) dollars to be paid to the United States to which payment well and truly to be made we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 5th day of July, 1904.

Whereas lately, to wit, on the 29th day of June, 1904, at a circuit court of the United States in and for the eastern district of New York, in a proceeding therein pending an order was entered dismissing the writ of *habeas corpus* obtained on the application of the above named petitioner and the said petitioner having duly obtained an appeal from the said order to the Supreme Court of the United States and filed a copy thereof in the clerk's office of
80 the circuit court to review the same.

Now, the condition of the above obligayion is such that if the said petitioner George W. Beavers shall prosecute said appeal to effect and shall answer all costs if he fails to make the said appeal good, then this obligation to be void, else to remain in full force and effect.

GEORGE W. BEAVERS. [L. S.]
HENRIETTA A. SEDGWICK. [L. S.]
JOHN McCORMACK. [L. S.]

Sealed and delivered and taken and acknowledged this 5th day of July, 1904, before me

J. G. COCHRAN,
U. S. Commissioner, E. D. of New York.

UNITED STATES OF AMERICA, *Eastern District of New York*, } ss:

John McCormack and Henrietta A. Sedgwick each being duly sworn for himself says, that he is worth more than the sum of five hundred ($500.) dollars over and above all his just debts and liabilities.

HENRIETTA A. SEDGWICK.
GEORGE W. BEAVERS.
JOHN McCORMACK.

Sworn to before me this 5th day of July, 1904.

J. G. COCHRAN,
U. S. Commissioner, E. D. of New York.

Approved as to form, amount and sufficiency.
EDWARD B. THOMAS, *U. S. J.*

Endorsed: Bond for costs. Filed July 5, 1904.

81 United States Circuit Court for the Eastern District of New York.

In the Matter of the Application of GEORGE W. BEAVERS for a Writ of *Habeas Corpus*.

GEORGE W. BEAVERS, Appellant,
against
CHARLES J. HAUBERT, United States Marshal in and for the Eastern District of New York, Appellee.

Due service on the 6th day of July, 1904, of a true copy of each of the foregoing papers on appeal, filed by the appellant in the above entitled cause, namely, petition of appeal, assignment of errors, order as to custody and bail, bond pending appeal, bond for costs on appeal, citation and notice of appeal is hereby admitted, on behalf of the appellee.

Dated, July 6th, 1904.

WM. J. YOUNGS,
U. S. Attorney.

Endorsed: Admission of service. Filed August 4, 1904.

82 UNITED STATES OF AMERICA, *Eastern District of New York*, } ss:

I, B. Lincoln Benedict, clerk of the circuit court of the United States of America for the eastern district of New York in the second judicial circuit, do hereby certify that the foregoing pages numbered from 1 to 81 inclusive, contain a true and complete transcript of the record and proceedings had in said court in the cause entitled:—In the matter of the petition of George W. Beavers for a writ of *habeas corpus*, George W. Beavers, appellant, against Charles J. Haubert, United States marshal in and for the eastern district of New York, appellee, as the same remain of record and on file in my office; and that it is a correct transcript therefrom and of the whole of the originals.

In testimony whereof I have caused the seal of the said court to be hereunto affixed at the borough of Brooklyn, in the city of New

York, in the eastern district of New York, in the second circuit, this 19th day of August in the year of our Lord one thousand nine hundred and four and of the Independence of said United States, the one hundred and twenty-ninth.

[The Seal of the Circuit Court, Eastern District of New York.]

B. LINCOLN BENEDICT, *Clerk*,
By J. G. COCHRAN, *Deputy Clerk*.

83 Circuit Court of the United States, Eastern District of New York.

In the Matter of the Application of GEORGE W. BEAVERS for a Writ of *Habeas Corpus*.

GEORGE W. BEAVERS, Appellant,
against
CHARLES J. HAUBERT, United States Marshal in and for the Eastern District of New York.

THE UNITED STATES OF AMERICA, *ss*:

The President of the United States to the Hon. William J. Youngs, United States district attorney for the eastern district of New York; Charles J. Haubert, Esq., United States marshal in and for the eastern district of New York; B. Lincoln Benedict, Esq., clerk of the circuit court of the United States and United States commissioner in and for the eastern district of New York:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States at the city of Washington, within thirty (30) days from the date of this writ, pursuant to an appeal duly allowed by the circuit court for the eastern district of New York and filed in the clerk's office of said court on the 5th day of July, A. D. 1904, in a cause entitled In the matter of the
84 petition of George W. Beavers for a writ of *habeas corpus*, George W. Beavers, appellant, against Charles J. Haubert, United States marshal in and for the eastern district of New York, appellee, to show cause, if any, why the final order of the circuit court rendered against the said appellant as in said appeal mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Edward B. Thomas, judge of the district court of the United States, this 5th day of July, 1904.

[The Seal of the Circuit Court, Eastern District of New York.]

EDWARD B. THOMAS, *U. S. J.*

Attest:
B. LINCOLN BENEDICT, *Clerk*,
By J. G. COCHRAN, *Deputy Clerk*.

85 [Endorsed:] Crim. 2/362 United States circuit court, eastern district of New York. George W. Beavers, appellant, against Charles J. Haubert, appellee. Original Citation on appeal. Morgan & Seabury, attorneys for appellant, No. 290 Broadway, borough of Manhattan, New York, N. Y. Received and filed July 5th, 1904.

86 [Endorsed:] Supreme Court of the United States In the matter of the petition of George W. Beavers for a writ of *habeas corpus*, George W. Beavers appellant *versus* Charles J. Haubert, United States marshal in and for the eastern district of New York, appellee Record Morgan and Seabury attorneys for appellant Wm. J. Youngs U. S. attorney and attorney for appellee. Appeal from the circuit court of the United States for the eastern district of New York.

Endorsed on cover: File No. 19,455. E. New York C. C. U. S. Term No. 355. George W. Beavers, appellant, *vs.* Charles J. Haubert, United States marshal in and for the eastern district of New York. Filed August 23d, 1904. File No. 19,455.